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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 JASON CHARLES KOPP,

12 Plaintiff,

13 v.

14 THOMAS A., et al.,

15 Defendants.
16

No. 2:22-CV-0282-TLN-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel,
19 ECF No. 31.

20 The United States Supreme Court has ruled that district courts lack authority to
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the
27 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
28 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. Plaintiff fails to argue that appointment of counsel is warranted because he is
10 unable to articulate his claims on his own due to the complexity of the legal issues in dispute or
11 that there is a likelihood of success on the merits. See ECF No. 31, pgs. 1-7. Plaintiff pleads the
12 Court “to allow [him] [his] right to fair and proper counsel” and to “[p]lease grant [him] an
13 attorney as [he] cannot afford one.” Id., pg. 2. However, Plaintiff fails to provide any factual
14 support regarding extraordinary need. Id. Thus, Plaintiff has failed to satisfy the standard set
15 forth in Terrell.

16 Plaintiff’s stated circumstances such as the inability to afford counsel are common
17 to almost all prisoners and, as such, not extraordinary. A review of the filings to date indicates
18 that Plaintiff can articulate his claims on his own, which are neither factually nor legally complex,
19 inasmuch as he independently prepared and filed a civil rights complaint, motion to proceed in
20 forma pauperis, submitted several letters and notices to the Court, and requested the assistance of
21 counsel. Further, at this stage of the proceedings before discovery, it cannot be said that Plaintiff
22 has established a particular likelihood of success on the merits. Exceptional circumstances
23 warranting the appointment of counsel do not currently exist.

24 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s request for the
25 appointment of counsel, ECF No. 31, is denied.

26 Date: 12/09/2022

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28 DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE